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20CV17802

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

SHERRY DOOLEY,	Case No.:
Plaintiff,	COMPLAINT
vs.	Action for Negligence, Assault and Battery, Breach of Contract, Fraud, Misrepresentation
MIGUEL SANDOVAL, an individual, and	Not Subject to Mandatory Arbitration
AIRBNB INC., a foreign corporation doing business in Oregon,	JURY TRIAL REQUESTED
Defendants.	Amount in Controversy: \$1,000,000.00
	Filing Fee: \$834.00 (ORS 21.160(d))

Plaintiff alleges:

PARTIES AND JURISDICTION

1.

Plaintiff Sherry Dooley ("Plaintiff" or "Ms. Dooley") at all times relevant was and is a resident of Multnomah County, Oregon and a business invitee of Defendant SANDOVAL and Defendant AIRBNB.

2.

Miguel Sandoval ("Defendant Sandoval" or "Sandoval") upon information and belief is domiciled in the State of Washington and a frequent resident of Colima, Mexico.

1 3.

2 Defendant Sandoval uses Defendant AIRBNB's services and Defendant  
3 AIRBNB's website to attract tenants to his rental property in Colima, Mexico. These  
4 services are by design and intention to engage citizens of the State of Oregon.

5 4.

6 AIRBNB Inc. ("Defendant Airbnb" or "Airbnb") is a foreign corporation,  
7 incorporated in California and headquartered in San Francisco, California. Defendant  
8 AIRBNB is registered to conduct business in Oregon and does conduct business in  
9 Oregon.  
10

11 5.

12 All of the material events complained of herein occurred in Multnomah County,  
13 Oregon or in Colima, Mexico.

14 6.

15 AIRBNB has a corporate office located at 30 NW 1st Avenue, Portland, Oregon  
16 97209 in Multnomah County. Portland is AIRBNB's operational headquarters for  
17 North America, overseeing service for customers across the American continent.  
18

19 7.

20 Accordingly, this court has jurisdiction and venue is proper in the Circuit Court  
21 for the County of Multnomah.

22 **FACTS**

23 8.

24 On or about May 17, 2019, while in Multnomah County, Oregon, Plaintiff  
25 Dooley utilized Defendant AIRBNB's website to contract with Defendant Sandoval and  
26

1 reserve an upstairs room on Sandoval's rental property in Colima, Mexico. The upstairs  
2 room was reserved for 23 May, 2019 and later.

3 9.

4 AIRBNB maintains a \$1,000,000 insurance policy for its hosts to cover harm  
5 that a guest may incur while staying at its host's rental for the benefit of the guest.

6 10.

7 Defendant Sandoval was insured by such a policy.

8 11.

9 Under that policy, Plaintiff Dooley is a third-party beneficiary of the policy.  
10

11 12.

12 Defendant AIRBNB is in privity with Defendant Sandoval because AIRBNB  
13 purchased an insurance policy for the benefit of Sandoval.

14 13.

15 Sandoval was an employee for AIRBNB because of the purchase of the  
16 insurance policy for Mr. Sandoval and the supervision and review of his work with  
17 specific metrics for Superhost status. Defendant AIRBNB, as Mr. Sandoval's employer  
18 is vicariously liable for harm that Plaintiff Dooley suffered while staying with  
19 Superhost Sandoval.  
20

21 14.

22 Plaintiff Dooley only stays with Superhosts when booking rooms using  
23 AIRBNB's website because she relies on Defendant AIRBNB representations that a  
24 Superhost provides more security than a basic host. Plaintiff Dooley is willing to pay  
25 more for the security that an AIRBNB Superhost is supposed to provide.  
26

15.

Defendant AIRBNB promotes a Superhost program and it is aware of the reliance its customers have in the program. At all times relevant, Defendant Sandoval was an AIRBNB Superhost.

16.

AIRBNB's website describes a Superhost as follows: "Superhosts are experienced hosts who provide a shining example for other hosts, and extraordinary experiences for their guests.

"Once a host reaches Superhost status, a badge superhost badge will automatically appear on their listing and profile to help you identify them.

"We check Superhosts' activity four times a year, to ensure that the program highlights the people who are most dedicated to providing outstanding hospitality.

"The Superhost Terms & Conditions apply. Airbnb doesn't endorse or sponsor any host, including Superhosts, or their listings."

17.

Ms. Dooley, in order to maximize her security, also prefers to contract with hosts who are "Zhima-verified."

18.

From AIRBNB's website, Zhima-verified is described as follows:

"Zhima verification is real-person verification that uses Alipay's Zhima Credit section. To provide a more trusted platform, Airbnb uses Zhima verification as a way to confirm hosts' and guests' identity. Zhima verification is fast, and most people are verified successfully.

1 “Once verified, guests will have a Zhima-verified badge on their profile page,  
2 and hosts will have the same badge on their profile page, as well as on their listing  
3 page.”

4 19.

5 Despite Defendant AIRBNB’s public promotion of its concerns for safety, its  
6 terms of service state that it is not responsible for any incident or guarantee the safety of  
7 the users of its service.

8 20.

9 Defendant AIRBNB knew or should have known that its market and claims  
10 regarding safety were misleading and a misrepresentation of the truth of their legal  
11 position.

12 21.

13 If Ms. Dooley had not seen and relied upon Defendant AIRBNB’s safety  
14 marketing and promotion of the Superhost and Zhima verified programs, Ms. Dooley  
15 would not have used the website. If Ms. Dooley had not seen and relied upon Defendant  
16 AIRBNB’s representation of Defendant SANDOVAL as a Superhost and Zhima  
17 verified, Ms. Dooley would not have used Defendant SANDOVAL’s service and  
18 accommodations.

19 22.

20 Alternatively, if Ms. Dooley knew of Defendant AIRBNB’s disclaimer of any  
21 guarantee of safety, the sexual assaults Ms. Dooley suffered may have been avoided  
22 because she would have found a safer accommodation for her stay.  
23  
24  
25  
26

23.

On or about 23 May, 2019, Plaintiff Dooley arrived in Colima, Mexico and settled into Defendant SANDOVAL's rental unit. The rental is located upstairs with an external staircase from a courtyard to walkway that leads to the front door of the rental.

24.

Defendant SANDOVAL's rental house is an older two-story house featuring an external staircase that leads to an upstairs living space. Anyone could ascend up the external staircase and not be detected, as it is unsecured. As the possessor of the rental, Defendant SANDOVAL had an affirmative duty to Ms. Dooley, his business invitee, to warn of latent dangers and to protect her against dangers in the condition of the premises about which he knew or should reasonably have known.

25.

Defendant AIRBNB retains the right to revoke the Superhost status of its hosts based on verification of certain conditions.

26.

Defendant AIRBNB controls the website that allows its hosts to advertise their accommodations and rooms.

27.

Defendant AIRBNB does not allow its hosts to manipulate or control its website.

28.

Unknown to Ms. Dooley, Defendant SANDOVAL failed to properly inspect and secure a window in the upstairs apartment. Defendant SANDOVAL was in the best



1 position to evaluate the apartment's safety. It was reasonably foreseeable that an  
2 intruder would enter through the unsecured window and that harm would come to Ms.  
3 Dooley.

4 29.

5 Despite these serious omissions of due diligence, Mr. Sandoval achieved a  
6 "Superhost" status.

7 30.

8 Airbnb failed to inspect the house to ensure its safety.

9 31.

10 The first night in Defendant SANDOVAL's apartment, Ms. Dooley was sound  
11 asleep when she awoke around 4 a.m. to find a male intruder in her room. The intruder  
12 had gone through all her belongings and was looking for cash. He took 800 pesos and  
13 demanded more. Ms. Dooley managed to convey to the intruder that he had all her  
14 money.  
15

16 32.

17 The intruder had a metal fork which he brandished as a weapon, and used the  
18 weapon to threaten Ms. Dooley, who, fearing for her life, chose life and did not fight  
19 him.  
20

21 33.

22 The intruder, Juan DOE, in a brutal fashion, repeatedly and forcibly raped her.  
23 The serial rapist had a sickening rancid odor; he stank like a homeless person who had  
24 not bathed in weeks. The serial rapist attempted to sodomize Ms. Dooley by attempting  
25

1 to force his penis into her mouth and anus without any lubricant. The sodomies failed  
2 and the rapist returned to raping Ms. Dooley.

3  
4 34.

5 Ms. Dooley feared for her life knowing that the weapon could be lethal. Ms.  
6 Dooley felt like a hostage; because of his physical strength, she felt powerless to oppose  
7 the rapist. With his threatening manners, Ms. Dooley knew that the rapist could stab  
8 her, disfigure her face or even kill her with the weapon.

9  
10 35.

11 After repeated raping Ms. Dooley, Juan Doe ejaculated into Ms. Dooley's  
12 vagina.

13 36.

14 In a state of shock, Ms. Dooley called Superhost Defendant SANDOVAL. The  
15 local police arrived in response and investigated the scene. Police determined that the  
16 rapist had entered through a window that was not locked nor secure. It appeared that  
17 the window was easily compromised by the intruder from the outside.

18 37.

19  
20 Upon information and belief, the sexual assaults perpetrated on Ms. Dooley may  
21 have been avoided if Superhost Sandoval had properly inspected the windows of the  
22 apartment that he rented to Ms. Dooley. It was reasonably foreseeable that an intruder  
23 would take advantage of an unsecure window and enter the apartment. It was also  
24 reasonably foreseeable that such a criminal would rape a woman.



38.

As a direct and proximate result of Defendant SANDOVAL and Defendant AIRBNB's negligence, Ms. Dooley sustained the following serious injuries: a violation of her vagina, possible exposure to sexually transmitted diseases [STDs]. Ms. Dooley was tested for the STDs once a month for one year. Each and every month when she was tested was a traumatic experience. Not knowing if she contracted a disease was a new distinct harm. Ms. Dooley suffers from emotional trauma and the stigma of being a rape survivor.

39.

Ms. Dooley suffers from Post-Traumatic Stress Disorder ("PTSD"), depression, high levels of distress and strong feelings of shame, guilt, anxiety, fear, anger, sadness and stigma associated with the rapes. Ms. Dooley will experience some form of psychological distress for years. Her PTSD manifests as nightmares, intrusive thoughts or vivid memories triggered by a homeless person who resembles her rapist. She feels as though she is always in danger or needs to always be on guard and distrusts certain people.

40.

Ms. Dooley faces a lifetime of monitoring as a rape survivor for developing substance abuse disorders, major depression, generalized anxiety disorder, obsessive-compulsive disorder, and eating disorders.

41.

Ms. Dooley is at risk for chronic pelvic pain, arthritis, digestive problems, chronic pain, non-epileptic seizures, and more intense premenstrual symptoms.

1  
2  
3 42.

4 Ms. Dooley's is 56 years of age. Under accepted actuarial tables, she has a life  
5 expectancy of 31.1 years. She will need to continue with therapy for the remainder of  
6 life.

7  
8 **FIRST CLAIM FOR RELIEF**

9 (Against Defendant Sandoval)

10 Negligence

11 43.

12 Plaintiff Dooley realleges ¶¶ 1 - 42 as if set forth fully herein.

13 44.

14 As alleged in this complaint, Defendant SANDOVAL was negligent in failing to  
15 exercise reasonable care by not inspecting the window for security purposes prior to  
16 Plaintiff Dooley booking her stay. Plaintiff Dooley was harmed and injured when she  
17 was sexually assaulted by Juan Doc during her stay at Mr. SANDOVAL's rental.  
18 Plaintiff Dooley's injuries, the full extent of which are still not known, were due in  
19 whole or in part to the acts and omissions of Defendant SANDOVAL, who was  
20 negligent in one or more respects:  
21

- 22 a) in failing to act as a reasonably prudent person;  
23 b) in failing to properly investigate the security of his rental;  
24 c) in failing to disclose the window's vulnerability to Ms. Dooley.

25 45.  
26

As a direct result of Defendant SANDOVAL's negligent acts and omissions as alleged in this complaint, Plaintiff Dooley experienced injuries and harm, all of which were reasonably foreseeable, and some of which may be permanent: a violation of her vagina, possible exposure to sexually transmitted diseases [STDs]. Traumatic monthly testing for STSs. Emotional trauma and the stigma of being a rape survivor. Ms. Dooley suffers from Post-Traumatic Stress Disorder ("PTSD"), depression, high levels of distress and strong feelings of shame, guilt, anxiety, fear, anger, sadness and stigma associated with the rapes. Ms. Dooley will experience some form of psychological distress for years. Her PTSD manifests as nightmares, intrusive thoughts or vivid memories triggered by a homeless person who resembles her rapist. She feels as though she is always in danger or needs to always be on guard and distrusts certain people. Plaintiff Dooley faces a lifetime of monitoring as a rape survivor for developing substance abuse disorders, major depression, generalized anxiety disorder, obsessive-compulsive disorder, and eating disorders. Ms. Dooley is at risk for chronic pelvic pain, arthritis, digestive problems, chronic pain, non-epileptic seizures, and more intense premenstrual symptoms. Ms. Dooley's is 56 years of age. Under accepted actuarial tables, she has a life expectancy of 31.1 years. She will need to continue with therapy for the remainder of life.

46.

As a result of the negligence of Defendant SANDOVAL, Plaintiff Dooley suffered economic damages in the loss of Eight Hundred pesos (MX\$800) and medical bills in a total estimated to be Twenty Thousand Dollars (\$20,000.00) but to be fully determined at trial.

1  
2  
3 47.

4 As a result of Defendant Sandoval's negligence, Plaintiff Dooley suffered non-  
5 economic damages in the form of emotional distress in a total amount estimated to be One  
6 Million Dollars (\$1,000,000.00) but to be fully determined at trial.

7  
8 48.

9 Pursuant to ORS 82.010, Plaintiff Dooley is entitled to pre and post-judgment  
10 interest in the amount of nine percent (9%) per annum.

11  
12 **SECOND CLAIM FOR RELIEF**

13 (Against Defendant AIRBNB)

14 Breach of Contract, Bad Faith, Misrepresentation

15 49.

16 Plaintiff Dooley realleges ¶¶ 1 - 48 as if set forth fully herein.

17  
18 50.

19 As alleged in this complaint, Defendants SANDOVAL and AIRBNB were  
20 negligent in failing to exercise reasonable care by not inspecting the window for  
21 security purposes prior to Plaintiff Dooley booking her stay. Plaintiff Dooley used  
22 AIRBNB's website to book a safe rental while on vacation. Plaintiff Dooley relied  
23 upon Defendant Superhost SANDOVAL to provide a safe rental. Because AIRBNB  
24 did not properly vet Defendant SANDOVAL's rental, AIRBNB's promise of safety in  
25 their contract with Plaintiff Dooley was breached. By not meeting its obligation to  
26

1 provide a safe rental, AIRBNB showed bad faith and misrepresented its offering to the  
2 public. By holding out Defendant SANDOVAL as a Superhost, AIRBNB increased its  
3 liability for the harm that Ms. Dooley suffered.

4 51.

5 As a result of Defendants SANDOVAL and AIRBNB's breach of contract, bad  
6 faith and misrepresentations, Plaintiff Dooley suffered economic damages in the loss of  
7 MX\$800 pesos and medical bills in a total estimated to be Fifty Thousand Dollars  
8 (\$50,000.00) but to be fully determined at trial.

9 52.

10 As a result of Defendants SANDOVAL and AIRBNB's breach of contract, bad  
11 faith and misrepresentations, Plaintiff Dooley suffered non-economic damages in the  
12 form of emotional distress in a total amount estimated to be One Million Dollars  
13 (\$1,000,000.00) but to be fully determined at trial.

14 53.

15 Pursuant to ORS 82.010, Plaintiff Dooley is entitled to pre and post-judgment  
16 interest in the amount of nine percent (9%) per annum.

17 54.

18 Plaintiff Dooley reserves her right to amend this complaint to adjust her request  
19 for compensation based on the known extent of her current and future injuries and harm  
20 caused by all three defendants' behavior, as well as to add new claims, including a  
21 claim for up to Seven Million Dollars (\$7,000,000.00) in punitive damages, as new  
22 information is learned in discovery.  
23  
24  
25  
26

**JURY DEMAND**

55.


Plaintiff Dooley requests a jury trial for this action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Dooley prays for judgment against Defendants as set forth in this Complaint as follows:

1. Plaintiff Dooley prays for judgment against Defendants Sandoval and AIRBNB for non-economic damages in an amount determined by the jury to be fair and reasonable, but not to exceed the sum of \$50,000.00 for economic damages, and \$1,000,000.00 for noneconomic damages and for her costs and disbursements incurred herein together with such other relief that the Court finds just and equitable including, reimbursed costs, maximum pre and post judgment interest, and any other relief the Court may deem necessary.

Dated: May 11, 2020.



Robert A Callahan, OSB #880263  
Attorney for Sherry Dooley, Plaintiff